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Current Topics.

Viscount Maugham.

SOME years ago LORD MAUGHAM recalled that when he first met, and held converse with, the late Sir FREDERICK POLLOCK, he was only "a young and unknown member of the Bar, with no practice and with invisible prospects." Since those far-off days the whirligig of time has brought in many changes, among which was a succession for him of a number of judicial posts, first, as a judge of the Chancery Division; then as a Lord Justice of Appeal; next as a Lord of Appeal in Ordinary; and eventually as Lord Chancellor. Now, on the appointment of a new Lord Chancellor in the person of VISCOUNT CALDECOTE, LORD MAUGHAM has been re-appointed a Lord of Appeal in Ordinary so that he can again share in the judicial work of the House. While such a return by a former Lord Chancellor is unprecedented, it is to be heartily welcomed, seeing that it secures his regular service in the hearing of appeals. There is, however, this marked difference between his status now as a Lord of Appeal in Ordinary and that which he enjoyed before his promotion to the Woolsack, namely, that, having been created a Viscount, he will take precedence over the other Lords of Appeal in Ordinary, to several of whom he was junior, and he will rank in the judicial hierarchy immediately after the Lord Chancellor.

War Risks: Insurance of Commodities.

IN the House of Commons last Monday, Mr. OLIVER STANLEY, President of the Board of Trade, made a statement concerning the effect of the administration of the War Risks Insurance Act, 1939, in so far as it deals with the insurance of commodities. He thought the main criticism of the scheme was the rate of premium. Here, he said, they were sailing in completely unchartered seas. The rate had not been fixed with the idea of making great profits, and, as time went on, it would be adjusted as closely as possible "to keep the thing on an even keel." The rate had not even been designed with a view to building up large reserves out of which, if things got worse, payments could be made. It had been based frankly on the assumptions given to him by those best qualified to judge, but they had had almost only guessing to go upon. As and when they got data which enabled them to correct the assumptions they had worked upon he would be perfectly ready to consider the alteration of the premium level. One of the assumptions, Mr. STANLEY said, had already been disproved, and he had already taken steps to credit to people insured under the scheme the period of the first month of the war, which they expected would take its full share of the risk. With regard to exemptions and exclusions, it was stated that the exemption of traders with less than £1,000 of stock was based largely on administrative grounds. The insurance companies had warned him that to bring in all the multitude of small traders would make it almost impossible to co-operate and add very much to the cost of administration. The addition to the fund from the inclusion of such traders would not be a very large amount, nor would it be substantial enough to make a real difference to the premium. Mention was made of the two grounds on which orders had been made excluding classes of commodities from the scheme, namely destructibility and unsaleability, and it was urged that both these classes of exclusion were justified. As to the use of commodity insurance as a pretext for raising prices, Mr. STANLEY indicated that, no matter how many processes a commodity passed through from the raw material to the consumer in the course of a year, the total premium could never exceed 6 per cent. Traders must only pass on their premium for the length of time during which they retained the commodity. A large number of people had taken advantage of the scheme to charge at various stages a great deal more than the extra cost of premium would justify, but that kind of profiteering would, it was indicated, come within the scope of the Bill which had been presented to deal with that class of case.

The Education (Emergency) Bill.

THE Education (Emergency) Bill, which was read a second time in the House of Commons on Monday, makes provision for the suspension of the raising of the school leaving age from fourteen to fifteen effected by the Education Act, 1936, which came into operation on 1st September. Mr. LINDSAY, in moving the second reading of the measure, observed that he little thought that it would fall to his lot to ask the House to suspend the Act just referred to, and emphasised that the new measure was a suspension and not a repeal Bill. He advanced three reasons which rendered the Bill necessary. First, in all the evacuation areas, and most of the neutral areas, schools were still closed, while in the reception areas, where the schools were working a double-shift system, or some other expedient was being adopted, there was a very great difficulty in providing the sort of education which was visualised between the ages of eleven and fifteen when the Act of 1936 was contemplated. Secondly, the building

programmes to meet the requirements of reorganisation were necessarily held up by the prior claims of the Services and Supply Departments for both labour and materials. Thirdly, the procedure of giving exemptions—of which something has already been said in these columns (82 SOL. J. 878)—could not possibly be worked at the present time. Representations had been made to the Board of Education from many authorities, and the speaker feared that exemptions would be given on a wholesale basis, thereby creating a very bad precedent for normal times. The Bill received the Royal Assent on Thursday.

The Petrol Ration.

ATTENTION may be briefly drawn to a statement recently issued by the Mines Department concerning the validity of petrol ration coupons. It is indicated that the two basic ration books for private cars, motor-cycles and tricycles, which have been issued by post offices and local taxation offices, cover a period of two months; that the coupons contained in the book marked "First Month" are valid up to 22nd October, and that those in the "Second Month" book are valid from 23rd October to 22nd November. Supplementary coupons for the classes of vehicles above referred to will be valid until the date last named or such later date as may be determined. A further announcement is to be made giving the date when such coupons will cease to be valid. Coupons issued for purposes other than road transport are valid for the same period as supplementary coupons issued for private cars. It is further pointed out that the cover page of current ration books should be retained in view of the fact that it is necessary to surrender the old ration book with any coupons which have not been used when application is made for a subsequent book.

Rules and Orders: Civil Flying.

THE House of Commons agreed on Tuesday to a motion that a Humble Address be presented to His Majesty praying that the Air Navigation (Licensing of Public Transport) Order, 1938 (Revocation) Order, 1939, be made. The Order puts an end to the system of licensing of internal air lines established in 1938. Captain BALFOUR, Under-Secretary for Air, indicated that under that system no civil aircraft might be flown on any internal route in the United Kingdom except under licence of the licensing authority, and it was a condition of such licence that a certain minimum service be maintained. Since the outbreak of war all civil flying in the United Kingdom for strategic and defence reasons had been prohibited except under special permit, and such services had to be under strict control as to the time-table and the conditions under which they operated in order to fulfil defence requirements which clashed with the ordinary commercial requirements imposed by the licensing authority. The continuation at the public expense of the requirements of the public transport licence or the licensing authority would, it was intimated, be unnecessary and inconvenient. Captain BALFOUR went on to say that in any civil internal air lines permitted during the war the carrying of mails would be subject to special arrangements between the Air Ministry and the Post Office, consideration being given to defence requirements.

Recent Decisions.

IN *Davis* v. *Foots* (p. 780 of this issue) the Court of Appeal (MACKINNON and DU PARCQ, L.JJ., and BENNETT, J.) reversed a decision of WROTTESLEY, J., who had held that the plaintiff was entitled to recover damages against the defendants for injury to herself and the death of her husband arising out of the escape of gas in a flat which was owned and had previously been occupied by the defendants. The escape was alleged to be due to the defendants' negligence in causing a gas fire to be disconnected and taken away from one of the rooms without warning, and the Court of Appeal intimated that there was no contractual relationship involving a duty to use care and skill with regard to the gas fire, and that the plaintiff had no cause of action.

In *Rex* v. *Barry and Others: ex parte Grey* (*The Times*, 7th October), a Divisional Court (LORD HEWART, C.J., and CHARLES and HUMPHREYS, JJ.) dismissed a motion for an order that writs of attachment for contempt of court might be issued against the editor, printers and publishers of the *News Chronicle*. An interview had been published with a party to a pending action relating to the subject-matter of the action. The editor admitted that a mistake had been made, but the court held that the fair course of the trial had not been prejudiced by the article complained of (see per LORD RUSSELL OF KILLOWEN in *Reg.* v. *Payne* [1896] 1 Q.B. 577, 580).

In *Nelson and Another* v. *Cookson and Another* (*The Times*, 6th October) ATKINSON, J., held that where an action for damages for alleged negligence in the course of an operation had not been commenced within the period of six months prescribed by the Public Authorities Protection Act, 1893, the assistant medical officer of the public hospital, who performed the operation, and the doctor who acted as his anæsthetist (both of whom denied negligence) were entitled under the Act to the same protection as the public authority (see *Freeborn* v. *Leeming* [1926] 1 K.B., at p. 161; *Venn* v. *Tedesco* [1926] 2 K.B., at p. 228).

In *Brigstocke* v. *Corse-Scott* (*The Times*, 6th October) the Court of Appeal (SLESSER, LUXMOORE and MACNAGHTEN, L.JJ.) dismissed the appeal of a domestic servant and her employers against the decision of a county court judge, who had awarded damages in an action brought by former employers for breach of contract by the servant, and for procuring or encouraging the breach and harbouring by her new employers.

In *Ludlam* v. *W. E. Peel & Sons* (*The Times*, 10th October) the Court of Appeal (SLESSER, L.J., and ATKINSON, J.) reversed the decision of a county court judge who had awarded the respondent damages in respect of a collision between the respondent's motor car and a cow belonging to the appellants on the ground that it was not necessary to prove actual negligence on the part of the drover, but that it was sufficient that the owner of cattle had caused them to be on the highway and had failed to keep them under proper control. SLESSER, L.J., stated that the county court judge was wrong in holding that it was not necessary to show any act of negligence on the part of the drover. In the present case there was no evidence that the owners who had employed a competent drover had failed to take reasonable care.

In *Selwood* v. *Towneley Coal & Fireclay Co., Ltd.* (p. 780 of this issue), the Court of Appeal (SLESSER, MACKINNON and DU PARCQ, L.JJ.) reversed a decision of CROOM-JOHNSON, J., and held that a workman who took money as compensation under the Workmen's Compensation Act, 1925, though he had not made a claim, was barred from a claim at common law. *Perkins* v. *Hugh Stevenson & Sons, Ltd.*, 55 T.L.R. 1000, applied.

In *Griggs* v. *Petts* (*The Times*, 11th October) the Court of Appeal (SLESSER, MACKINNON and DU PARCQ, L.JJ.) held that, where a trial judge made an order for payment out to the plaintiffs of money paid into court by the defendant with a denial of liability without making any order as to costs after the date of payment in, the order was one which would cause an injustice to be done, inasmuch as costs incurred by the defendant after payment in would not have been incurred if the money had been taken out. The Court of Appeal would, therefore, interfere with the trial judge's discretion, the case was treated as if the order had not been made, and the action (in which passengers in a motor car claimed damages against the driver for personal injuries arising out of an accident) would be tried, as asked by the notice of appeal.

War and Contracts.

III.—ABSENCE OF "FRUSTRATION.

A CONTRACT is not discharged simply because one part of the contractual work cannot be performed ("McNair," *op. cit.*, p. 94). In the *Leiston Gas Co. Case* [1916] 2 K.B. 428 the company agreed to light the Leiston district for five years and to provide and maintain the plant. The council agreed to pay an inclusive fixed sum per lamp per annum, payable quarterly. In 1915, the contract having been in part performed, further street lighting was prohibited by Order. The company sued for the three quarterly instalments that fell due after the date of the Order. The Court of Appeal held that the council was liable; the contract had not become wholly impossible and the consideration could not be apportioned as between the cost of the plant and the cost of the gas. "The payment is a flat rate payment," said Scrutton, J., "not a payment by meter for gas supplied; and it includes something for plant supplied and still available" (at p. 439).

As Pollock says: "The disturbing cause must go to the extent of substantially preventing the performance of the whole contract. Interference leaving a considerable part capable of performance would not be an excuse" ("Contract," 1936, 10th ed., p. 305).

He also cites *London & North Eastern Estates Co.* v. *Schlesinger* [1916] 1 K.B. 20. The company, before 1914, let to the defendant, an Austrian, a residential flat at Westcliff for three years. Upon the outbreak of war S. became an alien enemy and was prohibited from residing in Westcliff. He was liable, nevertheless, for the rent. The Aliens Restriction Order did not avoid the lease or make it illegal for S. to hold a lease in a prohibited area; his title was not ended, although his personal enjoyment was prohibited. He could, with consent, sub-let, or, said Avory, J., he could have lent the flat to a friend. "As the contract could be performed without his personal residence," Lush, J., observed: "the fact that his personal residence was prohibited by the Order did not make the performance of the contract impossible" (at p. 24).

Nor will "mere increased cost of performance, unless to an enormous or extravagant extent," discharge a contract. In *Tennants* v. *Wilson* [1917] A.C. 495, there was a contract to sell the plaintiffs their requirements of magnesium chloride over the year 1914; the contract contained a clause permitting the suspension of delivery during "contingencies beyond the control of the parties," such as war causing a short supply of labour or raw material or "otherwise preventing or hindering" manufacture or delivery. The greater part of the supply came from Germany; on the outbreak of war there was a substantial shortage and prices rose. The defendants, who had a large number of running contracts for the supply of magnesium chloride, gave notice suspending deliveries; the plaintiffs declined to acquiesce. The defendants were able at an increased price to obtain enough chloride to satisfy the plaintiffs' contract, if they disregarded other contracts and their normal business requirements. The House held that the shortage of supply "hindered" delivery, and that, therefore, under the express clause in the contract, the suspension was justified.

Earl Loreburn observed:—

> "I do not consider that even a great rise of price hinders delivery. . . . I cannot regard shortage of cash or inability to buy at a remunerative price as a contingency beyond the sellers' control. . . . To place a merchant in the position of being unable to deliver unless he dislocates his business and breaks his other contracts in order to fulfil one surely hinders delivery.
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> "In my view this hindered delivery. It did not prevent delivery or make it impossible, but it hindered delivery within the meaning of the contract now under consideration. . . ." (at pp. 510, 511).

EFFECTS OF FRUSTRATION.

After a frustrating event the loss "lies where it falls." "That rule means that sums paid or rights accrued before that event are not to be surrendered, but that all obligations falling due for performance after that event are excused" (*Report of the Law Revision Committee on the Rule in Chandler* v. *Webster* [1904] 1 K.B. 493; 1939, Cmd. 6009, p. 3). The committee thought that this rule was harsh and should be amended by statute: "The guillotine falls with faultless precision but often with ruthless effect." All the advantages of the contract tend to accrue to one party and all the disadvantages to the other. The rule has been described by Lord Shaw as the "something for nothing" doctrine (*Cantiare Case* [1924] A.C. 226, 258). Lord Wright's Committee declare that "the doctrine is modern and no part of the old common law. . . . It (i.e., the court) not only holds that the contract is at an end and that further performance is excused, but it also says that moneys paid shall remain as they are. On any view it is making a new contract. Why should it stop when it does and make an unreasonable contract, which it cannot fairly be said that the parties as reasonable men would have made for themselves if they had actually provided for the unanticipated event? If they had provided for dissolution of the contract would they not also have provided for some conditions on which dissolution should take place, such as repayment in whole or in part?" (p. 4).

In *Chandler* v. *Webster*, *supra*, the defendant agreed to let to the plaintiff for £141 15s. a room to view the coronation procession subsequently abandoned through the illness of the King. The plaintiff had paid £100 on account, which the Court of Appeal held could not be recovered; moreover, the defendant was entitled to the balance which had accrued before the procession was abandoned.

The money was reclaimed as upon a total failure of consideration, viz., the abandonment of the procession. The court's answer was that impossibility of performance does not "wipe out" the contract "altogether"; "it only releases the parties from further performance of the contract, and therefore the doctrine of failure of consideration does not apply" (*per* Collins, M.R., at p. 499). The Master of the Rolls agreed that the rule is "to some extent an arbitrary one, the reason for its adoption being that it is really impossible in such cases to work out with any certainty what the rights of the parties in the event which has happened should be. Time has elapsed, and the position of both parties may have been more or less altered, and it is impossible to adjust or ascertain the rights of the parties with exactitude."

In Scotland, *Chandler* v. *Webster* would have been decided the other way, as Lord Dunedin said in the *Cantiare Case* [1924] A.C. 226, 248; there, the law of restitution applies to a contract abrogated by war. Lord Shaw, in an illuminating judgment, pointed out that "there has been in high legal quarters a feeling both of uneasiness and of disrelish as to the English rule" (at p. 258). The rule, he continues, "admitted to be arbitrary, is adopted because of the difficulty, nay the apparent impossibility of reaching a solution of perfection. Therefore, leave things alone . . . That maxim works well enough amongst tricksters, gamblers, and thieves; let it be applied to circumstances of supervenient mishap arising from causes outside the volition of parties. Under this application innocent loss may and must be endured by one party, and unearned aggrandisement may and must be secured at his expense to the other party" (p. 259).

To remedy this rule came the Seventh Interim Report of the Law Revision Committee (*op. cit.*). As it is, the court implies a hypothetical term that the contract should be dissolved; "it is not a radical step to imply a further hypothetical term that unearned benefits should be returned under these circumstances" (at p. 6). Such is the law of Scotland, of the United States and civil law countries. Since May, when the Committee reported, the matter has become one of practical urgency.

The Committee recommended that when performance of a contract has been frustrated in whole or in part and money has, before frustration, been paid or agreed to be paid, three following rules should apply unless the contract discloses a contrary intention :—

(1) Money paid under the contract shall be *recoverable, subject to a fair deduction for expenditure* incurred by the payee in and about the contract. The allowance will include " overhead expenses," but not benefits accruing to the payee by reason of the expenditure. Loss of profit will be excluded. The amount recovered shall not exceed the total of money so paid or agreed to be paid.

(2) When the contract has been part performed and is severable, the above rule will apply only to the *unperformed part ;* the price paid or payable for the performed part will not be affected or varied.

(3) Amounts receivable by way of insurance, will, for this purpose, be disregarded.

The urgency of implementing this recommendation is implicit in the Andrewes-Uthwatt Report of September, 1939 (Cmd. 6100). The present rule is stated in the words of the Buckmaster Committee as follows :—

" If the contract is dissolved under this doctrine, the rights and obligations of both parties disappear as from the date of dissolution. But till that date the contract is good ; therefore any payment made or any right accrued, according to the terms of the contract while it was in force, will not be disturbed or varied " (at p. 4).

In the first of its general conclusions the 1939 Committee state that it would be " unwise, if indeed it were feasible," to regulate contractual obligations by statute where performance is hindered or frustrated by war, whatever the nature of the specific war cause. The parties may make their own bargain as to the incidence of war risk. Contracts are various, and the effects of war causes may vary from " trifling interruption to disastrous disturbance." The matter, say the Committee, is best left to the agreement of the parties—

" on the footing that the background of their contract is the common law as to frustration amended as respects the rule in *Chandler* v. *Webster* in the way suggested by the Law Revision Committee in Cmd. 6009 of 1939."

Amid the plethora of emergency legislation, may we hope that Lord Wright will introduce a timely Bill into the House of Lords to amend that rule in the way his Committee suggested.

(*To be continued.*)

Deduction of Income Tax 1939-40.

We have received several letters asking us to deal with the position in regard to the deduction of income tax from mortgage interest, ground rents, etc., in the light of the Second Budget of 1939 increasing the standard rate from 5s. 6d. to 7s. in the £. The Chancellor of the Exchequer has subsequently clarified the position during the Finance Bill debate in the House of Commons on 4th October, and a circular is being issued by the Inland Revenue on the subject which is available to the public.

Section 39 of the Act of 1927 contains the regulations governing the deduction of tax, and s. 211 of the 1918 Act and s. 12 of the Act of 1930 meet cases of changes in rates of tax.

There are two main sources of income taxed at source which have to be considered :—

(*a*) Interest, ground rent, annuity and other annual payments, including debenture interest and preference dividends.

(*b*) Dividends on ordinary shares.

As regards income falling within category (*a*), where some payments have been made in the present fiscal year and tax deducted at 5s. 6d. instead of 7s. in the £, the under-deduction must be recovered from the next subsequent payment (or payments). This recovery can be effected from subsequent payments up to 1st November, 1940, but this does not mean that the recovery is to be spread over several payments ; as far as possible the amount of tax which has been under-deducted should be added to the deduction from the *next* payment.

Thus, in the cases of ground rent cited by one of our correspondents, the position would be as follows :—

Ground rent paid at quarter days :

Deduction on 24th June, 1939	= 5s. 6d. in the £.
Deduction on 29th September, 1939	= 5s. 6d. in the £.
Deduction on 25th December, 1939	= 10s. in the £.
Deduction on 25th March, 1940	= 7s. in the £.

Ground rent paid half-yearly at Midsummer and Christmas :

Deduction on 24th June, 1939	= 5s. 6d. in the £.
Deduction on 25th December, 1939	= 8s. 6d. in the £.

The main principle to be borne in mind is that the adjustment should be made as far as possible from the *next* subsequent payment. We have not seen the Inland Revenue pamphlet at the time of writing, but this principle was affirmed very emphatically by Sir John Simon in the House of Commons on 4th October.

As regards dividends on ordinary shares falling within category (*b*), they are not affected by the change in the standard rate of tax. Whatever tax has been over-deducted or under-deducted ultimately affects only the ordinary shareholders of a company by leaving an increased or decreased profits fund available for distribution, so that there is no point in making any adjustment. Sir John Simon made the point as follows :—

" If the company has already declared a dividend of, say, 5 per cent., and has sent out its dividend warrants to the ordinary shareholders, deducting 5s. 6d. income tax, so that the ordinary shareholder, instead of getting £1, is getting £1 less 5s. 6d., there is nothing that the company has got to do now to get any more money out of the ordinary shareholder, because the income tax is paid by the company. It is not paid by the ordinary shareholder at all. All that has happened as between the company and the ordinary shareholder is that the company has decided to distribute in the form of dividend rather more, perhaps, than it otherwise would have done, because it anticipated that it would have to find only 5s. 6d. in the £ on its profits, whereas it will have to find 7s. on its profits."

In the case, however, of *preference* shares, the rules as to interest apply—that is to say, preference dividends fall within category (*a*). Preference dividend for this purpose means a dividend payable on a preferred share at a fixed gross rate per cent. ; or where a dividend is payable on a preferred share partly at a fixed gross rate per cent. and partly at a variable rate, such part of that dividend as is payable at a fixed rate per cent., and the expression " share " includes stock.

In the case of Sched. A tax no difficulty will normally arise as the Sched. A tax for 1939/40 does not become payable until 1st January, 1940, and tenants will deduct tax at 7s. in the £ from the next subsequent payment(s) of rent. There is, however, the case where property has changed hands between 6th April, 1939, and the Second Budget. Usually the contract of sale will have made provision for the apportionment of the Sched. A tax and this will have been computed at 5s. 6d. in the £. Unless the contract of sale contains a clause making it clear that the vendor would have to bear further tax if the rate were increased beyond 5s. 6d. later in the fiscal year, the purchaser has no remedy. Sir John Simon put the point like this :—

" A well drawn contract might even envisage the possibility of the rate of tax changing during the year. In that event it would merely be a question of adjusting

the 7s. according to the broken period of the year. In a case in which the change has not been contemplated or provided for, it is the purchaser who must take the risk. He cannot turn round on the man who sold the property when the income tax was 5s. 6d. and say: 'It turns out that the property I acquired two months ago has to bear income tax at 7s.; please make a contribution to me in respect of the increase.' The purchaser must take the risk, just as he can also take advantage of the rate of income tax going down."

Company Law and Practice.

The Emergency Legislation—III. Debenture-Holders' Remedies.

A FORTNIGHT ago I discussed in these columns the provisions of the Courts (Emergency Powers) Act, 1939, which require in certain cases the leave of the court to be obtained before a winding up petition may be presented. The same Act imposes restrictions on the exercise of the usual remedies of a mortgagee, and these restrictions, it need hardly be said, apply equally to the case of debenture-holders. The commonest remedy of a debenture-holder is the appointment of a receiver effected either under the provisions of the debenture or by means of an application to the court.

To deal first with the case of the appointment of a receiver out of court: Section 1 (2) of the Courts (Emergency Powers) Act provides that a person shall not be entitled, except with the leave of the court, to proceed to exercise any remedy which is available to him by way of (*inter alia*) the appointment of a receiver of any property. The provision does not apply in the case of debentures issued after the commencement of the Act (2nd September, 1939); but, with this exception, it is no longer possible for debenture-holders, whatever may be the default of the company entitling them to appoint a receiver, to make such an appointment without the leave of the court; and if the court is of the opinion that the company's inability to perform its obligations under the debenture is directly or indirectly attributable to the war, such leave may be refused or given subject to conditions (s. 1 (4) of the Act).

The leave of the court, though a condition precedent to the appointment of a receiver out of court, is not necessary for the institution or prosecution of any proceedings for the appointment by the court of a receiver of any property: see para. (*d*) of the proviso to s. 1 (2). This is not to say, however, that the ordinary debenture-holders' action, in which the relief claimed includes the appointment of a receiver, can be commenced without leave, for in such actions it is usual to claim (*inter alia*) foreclosure or sale; and s. 1 (2) (*b*) of the Act provides that no person, except with the leave of the court, is to institute any proceedings for foreclosure or for sale in lieu of foreclosure, or take any step in any such proceedings instituted before the commencement of the Act. Accordingly (again with an exception in the case of debentures issued after the commencement of the Act), it is not permissible to institute or prosecute a debenture-holders' action in which the writ claims foreclosure or sale, unless the leave of the court is obtained. If this claim is not included, proceedings may be instituted and, in a proper case, the appointment of a receiver obtained without the prior leave of the court; but it is difficult to see how such proceedings would be brought to a satisfactory conclusion, since, in the absence of a claim for foreclosure or sale, it would not seem possible to have the security realised in those proceedings. In cases of urgency, however, it may be necessary to avoid the delay involved in obtaining the leave of the court for the commencement of proceedings involving a claim for foreclosure or sale, and in those cases such a claim can be omitted from the writ and the court moved for the appointment of a receiver in the ordinary way, i.e., without the necessity for obtaining prior leave at any stage of the proceedings up to that point. Subsequently, no doubt, it would be possible to obtain leave to amend the writ by adding a claim for sale or foreclosure, so that the proceedings could thenceforward take their usual course.

We have seen that for the appointment of a receiver out of court the court's leave is necessary, and that such leave may be refused if the company's inability to perform its obligations under the debenture is directly or indirectly attributable to the war. If, however, the court is asked to appoint a receiver in proceedings such as I have just mentioned in which no prior leave need be obtained, there is no similar provision of the Act expressly authorising the court to refuse to make the appointment in cases where the default of the company is attributable to the war; but presumably if the company appeared and established that the war was responsible for its inability to fulfil its obligations under the debenture, the court would take this circumstance into account in exercising its decision to make the appointment.

So much for the effect of the Act on the remedies available to debenture-holders by way of the appointment of a receiver or by means of the institution of a debenture-holders' action. In addition to these remedies, it is not uncommon for debentures or a debenture trust deed to confer, either expressly or by reference to the appropriate sections of the Law of Property Act, 1925, powers of sale on the debenture-holders or the trustees, as the case may be, or to confer an express power of taking possession of the property subject to the debentures. The exercise of such powers is restricted in the same way as is the appointment of a receiver under the terms of the debentures; for the Act provides (s. 1 (2)) that the leave of the court must be obtained before a person proceeds to exercise any remedy available to him by way of the taking of possession of any property or the realisation of any security. Again, this does not apply to the case of debentures issued after the commencement of the Act; nor, so far as regards the exercise of a remedy by way of sale, does it affect—

(*a*) any power of sale of a mortgagee of land or an interest in land who is in possession of the mortgaged property at the commencement of the Act, or who before the commencement of the Act has appointed a receiver who at such commencement is in possession or in receipt of the rents and profits of the mortgaged property; or

(*b*) any power of sale of a mortgagee in possession of property other than land or some interest in land, where the power of sale has arisen and notice of the intended sale has been given before the commencement of the Act.

To revert to the topic of the appointment by debenture-holders of a receiver out of court; for this, as we have seen, the leave of the court is necessary in the case of pre-war debentures, and I have heard of at least one case in which such an appointment was purported to be made without the leave of the court, the appointors being at the time unaware of the necessity for first obtaining leave. There can be no doubt that such an appointment is invalid and inoperative, and that the person appointed receiver has no authority to deal with the company's assets. If the leave of the court is obtained he could be validly appointed or alternatively a debenture-holders' action could be commenced and the court asked to appoint him; but I do not know of any proceedings whereby any fresh appointment so made could be given retrospective effect so as to validate his position as from the date of the invalid appointment and ratify his acts prior to the date of his being validly appointed. In respect of the period during which a receiver, invalidly appointed, has acted, it would appear from the authorities that the company could elect either to treat the receiver as its agent, in which case it would be entitled to an account of the carrying on of the business and the profits which he has made or ought to have made, or alternatively to treat him as a trespasser, in which

case he is liable in damages for any assets converted by him (see *Ex parte Vaughan*, 14 Q.B.D. 25; *In re Goldburg* (*No.* 2) [1912] 1 K.B. 606). In the last-mentioned case it was held that the debenture-holders who wrongly appointed the receiver are also liable for such damages. As to the measure of damages, see *In re Simms* [1934] Ch. 1, from which it would appear that if the election is made to treat the receiver as a tortfeasor and to claim damages for conversion, he cannot also be made liable to account for the profits realised by the completion of contracts.

A Conveyancer's Diary.

Nuncupative Wills.

In all normal cases a will must, since 1837, be made in writing, signed by the testator and witnessed by two persons present simultaneously. But s. 11 of the Wills Act, 1837, makes an exception in favour of a soldier being in actual military service or a mariner or seaman being at sea. Such persons are allowed to make wills by any writing, attested or not, or by word of mouth, and if such a will is made a beneficiary is not disqualified from taking under it by being also a witness to it (*Re Limond* [1915] 2 Ch. 240). There are some peculiar provisions regarding the wills of mariners and seamen in their effect upon what are described in the Navy and Marines (Wills) Act, 1939, as "naval assets," which mean prize money, bounty money or any other money payable by the Admiralty. These rules are to be found in the Navy and Marines (Wills) Acts, 1865, 1930 and 1939, and over these we need not linger.

But s. 11 of the Wills Act in its relation to seamen is also affected by the Wills (Soldiers and Sailors) Act, 1918, s. 2, which provides that s. 11 "shall extend to any member of His Majesty's Naval or Marine Forces not only when he is at sea, but also when he is so circumstanced that if he were a soldier he would be in actual military service within the meaning of" s. 11.

Accordingly we can shortly state the classes of person who have the privilege of making a nuncupative will: First, these are all mariners and seamen, whether of the navy or marines, or not, while at sea (Wills Act, s. 11); second, these are all soldiers while "in actual military service" (*ib.*); third, these are all persons in the navy and marines while actually at sea or while they would be in actual military service if they were soldiers ((*ib.*) and 1918 Act, s. 2). The rules as to the navy and marines must be read subject to the special Acts referred to, in so far as they concern "naval assets"; fourth, by the Act of 1918, s. 5 (2), members of the Air Force count as soldiers for this purpose.

The Wills Act, 1837, s. 11, has always extended to infants, so as to allow them to make wills in these special circumstances, though a civilian infant can make no will (see *In the Estate of Stable* [1919] P. 7, and the Act of 1918, s. 1).

The Wills Act, 1837, s. 11 only allowed the privilege of making a nuncupative will in respect of personalty, and where a nuncupative will purported to dispose of realty and personalty by provisions inextricably mixed up, it was not admitted to probate (*Godman* v. *Godman* [1920] P. 261). But a person who dies after 6th February, 1918, and is entitled to make a nuncupative will may make one of realty as well as personalty (Act of 1918, s. 3 (1)).

Until the Act of 1918 a nuncupative will could not have effect as the appointment of a guardian of infant children (see *In the Estate of Tollemache* [1917] P. 246). But now by s. 4 of that Act a will which is valid under the Wills Act, s. 11, or which would, if it had been a disposition of property, have been so, is valid to appoint testamentary guardians. Under this section a nuncupative will which disposes of no property, but purports only to appoint guardians, is valid, unlike the documents to that purport discussed in *In the Estate of Tollemache*.

A person entitled to make a nuncupative will may thereby revoke a previous will whether nuncupative or not (*In the Estate of Gossage* [1921] P. 194). But a nuncupative will, once validly made, continues in force until validly revoked in accordance with the Wills Act. Thus, in *In the Estate of Booth* [1926] P. 118, the testator made a written will, not properly attested, at Gibraltar, in 1882, when his regiment had just received orders to go to Egypt to fight Arabi Pasha. He returned safely, and died at a great age about forty-one years later. In the meantime the document had been destroyed, along with the contents of the house where it was, in 1916. It was admitted to probate in the words sworn to by the widow, to whom the will gave the estate, and although it was made long before 1918, it carried realty, as the Act of 1918 applies to a testator who survived that year. The will of a person entitled to make a nuncupative will is revoked by his marriage, however the will was made (*In the Estate of Wardrop* [1917] P. 54). In that case an ordinary will in favour of the testator's fiancée was revoked by his marriage to her, but she took the estate under a subsequent oral will. Since that case, of course, it has become possible to make a will expressed to be in contemplation of marriage, which is not revoked by the contemplated marriage (Law of Property Act, 1925, s. 177). This section presumably applies to nuncupative wills as well as to other wills.

In *In the Estate of Scott* [1903] P. 243 a statement made in response to a suggestion of the military authorities by a person entitled to make a nuncupative will, was held valid; and in *Gattward* v. *Knee* [1902] P. 99, a statement as to what was to happen to the testator's property if he was "killed in action" was a valid disposition of his property when he died of fever at the siege of Ladysmith.

If a nuncupative will is contained in a document (e.g., a letter) which contains other statements which it is not in the public interest to publish, only the material parts are admitted to probate (*In the Estate of Heywood* [1916] P. 47). For example, such a letter might contain statements about the military situation which ought to be kept secret.

Most of the decided cases fall under one of two heads: either they are concerned with the question whether a given form of words was or was not testamentary at all, or they deal with the question whether the alleged testator was a soldier in actual military service or a seaman at sea.

On the first point, the courts have shown considerable leniency, but there comes a point beyond which they cannot say that an alleged nuncupative will was made with the intention of making a will at all. Thus, in *In the Estate of Beech* [1923] P. 46, the testator had made an ordinary will, but wrote from the front letters stating as a fact what he had done, the letters being inconsistent with the will. It was held, on the construction of these, that the testator was not thereby trying to make codicils, but was saying (erroneously, as it turned out) "I dare say you would like to know that I have left you" certain property. The letters were not admitted to probate. But the test is only whether the testator meant to make a will in the sense that he "intended deliberately to give expression to his wishes as to what should be done with his property in the event of his death" (*In the Estate of Stable* [1919] P. 7). It was held in that case that an expression of wishes by an infant who had actually been advised by his solicitor that he could not make a will, and who, therefore, can hardly have thought he was making a will, was operative. The test is reasonably clear, but the line is rather hard to draw, and it looks as if less leniency will be shown to a nuncupative disposition by an adult or educated man than to one by an infant or an uneducated man. Thus, in *In the Estate of Scott* [1903] P. 245, a statement by a private soldier that his "effects" were to be "credited" to a legatee, was held sufficient. The testator in *In the Estate of Beech* was a man of mature age, who had considerable landed property, with the consequence that his letters received a more severe

construction. But it was intimated that a letter to the testator's wife, while the testator was a prisoner of war, giving instructions for a will varying an existing ordinary will, the new will to be drawn by solicitors, was in itself capable of operation as a nuncupative will (*Godman* v. *Godman* [1920] P. 261). But in that case, as we have seen, the alleged nuncupative will was invalid on other grounds.

There are many cases on the question whether an alleged testator is capable of making a nuncupative will. In this connection it has to be remembered that since the Act of 1918 a sailor, as well as being able to make a will at sea, is in as good a position as a soldier regarding wills made on his way to the scene of his duties (*In the Estate of Yates* [1919] P. 93). In that case the will was that of a naval officer who had been ordered, when at his home at Southsea, to join a ship in South Africa. The oral will was made at the railway station as he was setting out. And, apart from the Act of 1918, the expression "at sea" was loosely construed. Thus, in *In the Estate of Lay*, 2 Curt. 375 (approved in *In the Estate of McMurdo*, L.R. 1 P. & M. 540), it was held that a nuncupative will made by a sailor temporarily on shore leave from his ship was valid. But a person (not a soldier) who has never been to sea, though he was at the time under orders to go to sea, where he later got drowned, could not make a nuncupative will, apart from the Act of 1918 (*In the Estate of Anderson* [1916] P. 49). Presumably, this case would now be differently decided under the Act of 1918.

So far as soldiers are concerned the question is whether they are "in actual military service." This expression does not mean mere membership of the army even in time of war (*In the Estate of Grey* [1922] P. 140). It means "*in expeditione*," an expression which is, however, not happily translated by the common phrase "on an expedition." The test is whether the testator has it in view to proceed to a seat of military operations and has actually taken a step towards going there (*In the goods of Hiscock* [1901] P. 78). In that case the testator was a person who had volunteered for service in South Africa and had gone to barracks with a view to embarkation. Similarly, in *In the Estate of Kitchen*, 35 T.L.R. 612, the testator was a soldier who was on leave prior to being sent abroad. And in *Gattward* v. *Knee* [1902] P. 99 the will was that of a soldier in a regiment in India, made after the regiment had had orders to mobilise with a view to going to South Africa. And in *In the Estate of Anderson* [1916] P. 49 the court seems to have thought that a member of the St. John's Ambulance, serving on a transport, would have been a seaman, but for the fact that when he made his will he had never been to sea. Thus also, a female typist on a liner was held to be a seaman in an Irish case (*In the Estate of Hale* [1915] 2 I.R. 362). And a nurse employed by the War Office on hospital ships was held to be a soldier, so that an unattested testamentary document made by her after being ordered to embark on a hospital ship was valid as a will (*In the Estate of Ada Stanley* [1916] P. 192). The length of time during which a soldier continues to be "*in expeditione*" is rather liberally interpreted. Thus, in *Re Limond* [1915] 2 Ch. 240, a soldier in a military escort accompanying a party engaged on the delimitation of part of the frontier after the conclusion of the Waziristan operations of 1895, was held capable of making a nuncupative will.

The foregoing article is written to guide practitioners as to the sort of points they must consider if they are confronted with what is alleged to be a nuncupative will. It is not meant to encourage them to advise their clients to make such wills: there are difficulties, as has been explained, regarding the validity of such dispositions, and the construction of the loose words which laymen tend to employ in such circumstances is liable to cause even greater difficulties. A further caution must be added. If a layman makes a properly drawn ordinary will, and is about to go away on military or naval service, he should be told that he has power to make an informal will, and be advised to be very careful not to do so inadvertently. It is quite possible for a person in such a position to use words, in speech or writing, which will amount to a valid new will which will be effective to upset his carefully considered properly executed existing will.

Landlord and Tenant Notebook.

Miscellaneous Provisions of the Landlord and Tenant (War Damage) Act, 1939.

THE protection of the landlord in the case of ground leases and multiple leases is provided for in s. 16. First, in relation to ground leases alone, if land unfit through war damage is not disclaimed, and the ground lease will expire before the end of five years from the date of an application by the landlord to the court, the court may, on such application, grant the landlord the right to possession on terms as to compensation or otherwise. The court must be satisfied that it is equitable to make such an order, having regard to all the circumstances of the case (s. 16 (2)).

In the case of both ground leases and multiple leases where there has been a disclaimer (in the latter case a disclaimer of some of the separate tenements will count), the court has power in certain circumstances, on the landlord's application made at any time, to grant him the right to such possession on such terms as to compensation or otherwise as appears just. The circumstances in which the court may make such an order arise where the landlord is not entitled to possession of the whole of the land comprised in the lease free from any interest in or derived out of the term created by the lease (s. 16 (1)).

The last section of Pt. II dealing with disclaimer and retention of leases (s. 17) completely excludes agricultural and mining leases from the operation of Pt. II. An agricultural lease is defined by s. 24 as "a lease the land comprised wherein consists wholly or mainly of agricultural land or agricultural buildings within the meaning of the Rating and Valuation (Apportionment) Act, 1928" (see s. 2 (2) of that Act for the very detailed definitions of these terms). "Mining lease" is defined (s. 24) to have the same meaning as in the Landlord and Tenant Act, 1927, that is to say, "a lease for any mining purpose or purposes connected therewith," and "mining purposes" include "the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines or minerals, in or under land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes" (Landlord and Tenant Act, 1927, s. 25 (1)).

Special provision is, however, made in s. 19 as to agricultural and mining leases, whether such leases are made before or after 2nd September, 1939. If buildings or works comprised in an agricultural or mining lease are unfit by reason of war damage, the tenant may apply to the court, which has a discretion either to determine the lease or modify its terms, whether by reducing the rent or otherwise. All the circumstances must be taken into account.

A useful extension of the provisions of s. 84 of the Law of Property Act, 1925, relating to the discharge and modification of restrictive covenants is contained in s. 18. Where buildings comprised in ground leases or multiple leases made either before or after 2nd September, 1939, have been rendered unfit by war damage, s. 84 of the Law of Property Act, 1925, has effect in relation to the land comprised in the lease, subject to certain modifications. It is provided as a matter of course that, when the buildings have been rendered fit, no application can be made to the authority (see s. 84 (10) of the Law of Property Act, 1925), which the authority could not have entertained if s. 18 of the 1939 Act had not been passed. It will be recalled that s. 84 (1) (*a*), (*b*) and (*c*) of the Law of

Property Act, 1925, are exhaustive of the grounds on which the authority might discharge or modify a restriction on the user of or building on land. Those grounds are briefly: (*a*) the restriction is obsolete owing to changes in the character of the neighbourhood or other circumstances, or the continuance of the restriction would impede the reasonable user of the land without any practical benefit to other persons; or (*b*) agreement by the persons entitled to the benefit of the restriction; or (*c*) the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction.

The modifications now introduced are: (i) that in the cases to which s. 18 applies (see above), in addition to the above grounds for the exercise by the authority of its powers, the authority may act on the further ground that the proposed discharge or modification is desirable in order to permit the economical use or development of the land comprised in the lease, or is otherwise desirable in the national interest; (ii) where the authority discharges or modifies wholly or partially any restriction affecting the interest created by the lease acting on any of the grounds in (i), the authority may also exercise its powers on any of those grounds in relation to any similar restriction affecting the freehold out of which the leasehold interest is derived; (iii) s. 84 of the Law of Property Act, 1925, shall apply to restrictions affecting interests created by the lease in like manner as it would have applied to restrictions affecting the land had the land been freehold, whatever the term of the lease and whatever period of the term has expired. This is so notwithstanding s. 84 (12) of the 1925 Act, which provides that where a term of more than seventy years is created in land, whether before or after 1st January, 1926, s. 84 shall, after the expiry of fifty years of the term, apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been freehold, provided that this does not apply to mining leases.

Notices required or authorised to be served under the Act must be in writing (s. 20 (1)). Service may be effected by (*a*) delivering it to the person on whom it is to be served; or (*b*) leaving it at the usual or last-known place of abode of that person; or (*c*) sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or (*d*) in a case where it is to be served on a body corporate, by delivering it to the secretary or clerk thereof at the registered or principal office thereof or sending it in a prepaid registered letter addressed to the secretary or clerk thereof at that office; or (*e*) in such other manner as the court on an application made in that behalf may direct (s. 20 (2)).

Provision is made for service in the cases where the interest of a former landlord or tenant in the land comprised in a lease has passed to any person. In such cases (*a*) service of any such notice on that former landlord or tenant by a person who does not know and has no reason to believe that the interest has passed, is treated as service on the person to whom the interest has passed; (*b*) the former landlord or tenant, on the receipt of any such notice, must forthwith serve the notice on the person to whom the interest has passed, and if he fails to do so, he will be liable to make good to any other person any damage suffered by that other person by reason of the failure (s. 21 (3)).

A notice with respect to a lease is deemed to have been served on the landlord if served on any person for the time being authorised by the landlord to receive the rent payable under the lease (s. 20 (1)).

Contracting out of any provisions of the Act relating to war damage is impossible before the war damage occurs, although landlords and tenants may make what bargain they please about the damage after its occurrence. This is provided in s. 21, which states quite shortly that the provisions of the Act shall have effect in relation to any war damage notwithstanding any contract to the contrary made before the occurrence of that damage. No doubt the decision to make this unqualified obstacle to contracting out was influenced by reflection on the fate of the modified "contracting out" provision in s. 9 of the Landlord and Tenant Act, 1927, as decided by *Holt* v. *Lord Cadogan* (1930), 46 T.L.R. 271.

The jurisdiction of the court under the Act is exercised by a county court. This is subject to the power of the High Court to remove any proceedings commenced in a county court, if the High Court considers it desirable to do so (s. 111, County Courts Act, 1934).

The only matter of importance that remains to be dealt with is in s. 23, under which a judge may, in proceedings under the Act, summon one assessor, notwithstanding that no application is made for that purpose. Section 88 (1) of the County Courts Act, 1934, empowers the judge to "summon to his assistance . . . one or more persons of skill and experience in the matter to which the proceedings relate who may be willing to sit with the judge and act as assessors. If the judge summons an assessor, he may direct him to inspect the land in question and report thereon in writing, and must submit the report to the parties for their observations, which he must take into consideration" (s. 23 (2) and (3)).

Our County Court Letter.

TRANSFER OF INN.

In a recent case at Canterbury County Court (*Gasson* v. *Munt*) the claim was for £30 as agreed liquidated damages, or alternatively £59 11s. as damages for breach of contract. The plaintiff was formerly the licensee of the "Halfway House," Barham, which the defendant agreed to purchase. The agreement provided for the payment of £250 for the trade fixtures, furniture and fittings and £40 for the stock-in-trade of beer and spirits. Completion was originally fixed for the 6th October, 1938, but was postponed to the 13th October to coincide with the sitting of the licensing justices. The plaintiff's valuer did everything to facilitate completion on the latter date, but, owing to the defendant's default, the plaintiff had incurred expense to the amount of £59. The defendant's case was that the premises were offered to him by the brewers who were the owners, and the transfer was arranged for the 6th October. It transpired, however, that the plaintiff was unaware of this, and the defendant accordingly agreed to try and arrange (through his agents) for a transfer on the 13th October. Nothing was heard, however, until the 8th November, and the delay was due to the plaintiff's valuer. If any other date was agreed, instead of the 6th October, the arrangement should have been confirmed through the defendant's agents. His Honour Judge Clements gave judgment for the plaintiff for the amount fixed by the agreement, i.e., £30, and costs.

THE RENT OF ADVERTISING FRAMES.

In a recent case at Wellingborough County Court (*Automatic Salesmen, Ltd.* v. *Moon*) the claim was for £3 18s. as arrears of rent of an advertising frame. The case for the plaintiffs was that the amount claimed was due under a written agreement, under which the frame was let for three years at a rent of 2s. a week. The defendant's case was that she had returned the frame in October, 1938, and had been sued on three previous occasions for arrears of rent. Even if she paid the £3 18s. claimed, she would not be free of liability. If she had kept the frame for three years she would have paid about £18, but still would not have become the owner. It was a hardship upon her to be sued in piecemeal fashion. Having ascertained that the total amount outstanding was £8 8s., His Honour Judge Galbraith, K.C., ordered the claim to be amended and gave judgment for that amount, with costs of £3 18s., payable at 3s. a month. It is to be noted that a fresh cause of action arises as and when each succeeding

instalment remains unpaid when due. If, on the hearing of the first action, a defence of fraud is raised, but without success, the issue is then *res judicata*. That defence cannot then be raised in an action based on non-payment of any subsequent instalment. See *Rentit, Ltd.* v. *Duffield* (1937), 3 All E.R. 117.

JOINT USE OF HAULAGEWAY.

In *Ford* v. *Hardy*, recently heard at Bristol County Court, the claim was for damages for trespass and an injunction. The plaintiff had lived for forty-three years in a house rented from the defendant, who lived next door. Four or five years ago, the defendant had asked permission to leave a milk float in a haulageway, which adjoined the plaintiff's house. The plaintiff had not only given this permission, but had also altered the shape of his garden, thus enabling the milk float to be brought round to the defendant's own door. At Christmas, 1938, the defendant left his motor car in the haulageway, thereby diminishing the space available for the plaintiff's dustbins and other storage. On objecting, the plaintiff received notice to quit, but this was inoperative as the tenancy was controlled. The defendant had continued to use the haulageway for parking his car, and the plaintiff accordingly took proceedings to restrain such user. The defendant's case was that he had always used the haulageway, which was jointly held between himself and his predecessors in title and the plaintiff. His Honour Judge Wethered expressed no opinion as to the rights of entrance and egress, but judgment was given for the plaintiff for £2 as damages. An injunction was also granted restraining the defendant from using the haulageway for storing his motor car or other articles, with costs to the plaintiff.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

THE DEFINITION OF SERIOUS DISABLEMENT.

In *Walker* v. *Brooker and Orton, Ltd.*, at Walsall County Court, the applicant was aged seventeen, and his case was that on the 7th May, 1937, he had lost a portion of the index finger of his left hand while working a circular saw in a timber yard. The applicant's pre-accident wages were 15s. a week, and he claimed compensation at 11s. 3d. a week from the 7th May to the 19th July, 1937, and a declaration of liability. The applicant's evidence was that, although he was engaged as a drawer-off (i.e., taking timber away from the saw) he was told by the foreman to split fencing on the saw and also to cut the scrap into lengths for firewood. This was accordingly done, and the applicant could be seen, while working the saw, from the manager's office. Corroborative evidence was given by another youth employed by the respondents. Liability was denied on the ground that the accident did not arise in the course of the employment, as the applicant was guilty of misconduct in using the saw, contrary to orders. He was actually under notice, for breach of the rule that the youths were not allowed to work the saws, when the accident happened. His Honour Judge Tebbs was satisfied that the respondents' manager had forbidden the use of the saw by the applicant, who had acted in disregard of instructions. Nevertheless under the Workmen's Compensation Act, 1925, s. 1 (1) (*b*), an award might be made if the injury had resulted in serious and permanent disablement. The applicant had admitted (*a*) that on the 19th July, 1937, he had obtained work as a transport worker at a wage (viz., 18s. a week) which was higher than his pre-accident wages, (*b*) that on the 20th August, 1937, in consequence of a conviction for attempting to administer poison to his schoolmaster, he was sent to an approved school for a period expiring in 1939. The applicant was there being trained as a cabinet maker, but it did not follow that he would become skilled. If the applicant had been injured late in life, when he was not likely to change his occupation, the injury might not be so serious. To a youth of the applicant's age, however, the loss of part of the index finger was a serious and permanent disablement. An award was accordingly made as asked, with costs. Compare *Hopwood* v. *Olive and Partington* (1910), 102 L.T. 790; *Brewer* v. *Smith* (1913), 6 B.W.C.C. 651. In regard to the applicant's attendance at an approved school, it is to be noted that it is no answer to a claim for compensation to say that, apart from the incapacity due to the injury, the applicant would still be unable to work owing to a supervening cause, e.g., that he has been sent to prison. See *McNally* v. *Furness* (1913), 6 B.W.C.C. 664; *North's Navigation Co.* v. *Batten* (1933), 26 B.W.C.C. 525.

LUMP SUM FOR LOSS OF FINGER.

In *Lloyd* v. *Lloyd*, at Machynlleth County Court, the applicant's case was that he had had an accident to the index finger of his right hand. The finger became stiff, and the proceedings had previously been adjourned for the finger to be amputated. The operation had been performed, but the applicant's grip was still impaired. The medical evidence was that, in course of time, the applicant would become accustomed to doing without the finger. His Honour Judge Samuel, K.C., ordered an agreement to be recorded for the payment of £70 in full settlement.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Solicitors and The Law Society.

Sir,—In the early part of this year I wrote an article for the *Evening Standard* entitled "Don't let your son be a Lawyer." I wrote that article in an effort to raise the status of the solicitor's branch of the legal profession and to make the faces of the members of the Council of The Law Society blush to think that the Society in its *Gazette* had permitted to be published the advertisements I quoted in my article showing that the market value of solicitors was two a penny.

The main object of certain classes of people forming themselves into professions, trade unions and such like, is to ensure that all members of such bodies shall receive a livable wage.

Now, is the Council of The Law Society doing its best to ensure that all solicitors shall have a livable wage? Let us see! In the hearings which are taking place before the tribunals which are sitting to inquire into the cases of enemy aliens solicitors have no right of audience. Under the provisions of the National Service (Armed Forces) Bill, here again solicitors have no right of audience before the committees to be set up to hear the "hardship cases." Surely it was the duty of the Council to bring pressure upon the Government to permit solicitors who are officers of the court and pay heavy Government dues for the privilege of practising to appeal before the tribunals and committees I have mentioned.

Then again, in the terrific scramble for safe Government jobs which is going on, solicitors are being left out in the cold. All the plums are being given to counsel.

I think I am right in saying that, out of the hundred legal gentlemen appointed to inquire into the status of aliens, only one was a solicitor and he a member of the Council.

If the Council of The Law Society protected its members in the same manner that the General Council of the Bar protects its members, life for solicitors would be worth living!

London, W.C.2. W. FITZGERALD.
6th October.

The Law Society.

Sir,—I am afraid the President of The Law Society has missed the point of my previous letter, and this must be my excuse for troubling you again.

It is not that I and others are complaining because we have personally suffered any inconvenience from the removal of The Law Society's principal officers and records to Newbury. Any personal inconvenience is, of course, a minor matter which we have got to suffer in the same way as others during the war. The main point of my original letter was that the action of the Council was an unfortunate example to set to those members of the profession who were endeavouring to carry on their practices in London. Further, that although no doubt it was desirable to place the Society's records in a position of safety, it was unnecessary to send the librarian (whom I gather has now returned) and the secretary away from headquarters. I venture, with respect, to differ from Mr. Holme when he says that correspondence with the secretary is the same thing as a personal interview. Further, how can it be suggested that a great institution like The Law Society can function properly if its principal officer who is responsible for the supervision of its activities is away most of the week in the Provinces.

My reference to the staff was mainly to the female staff in the dining room and smoking room, many of whom were, in fact, dismissed soon after the outbreak of the war, and have not returned. I do not, of course, complain of the absence of members of the staff who are engaged in national or military service.

The letter from another correspondent which follows that of Mr. Holme in your last issue deals with a grievance which seems to me a particularly serious one. Surely it cannot be suggested that the Register of Vacancies, etc., is a record of such value as to require sending to Newbury ?

I may conclude by informing Mr. Holme that I have been almost daily at the Chancery Lane premises since the outbreak of war, and my letter was written as a result of complaints and criticisms by a great number of members who are in regular attendance there as well as myself. I fully appreciate the difficulties of the Council in dealing with the troubles with which it is confronted, but all of us who still think the decision was an unfortunate one are hoping it will be reconsidered.

London, W.C.1. HERBERT S. SYRETT.
6th October.

Solicitors' Remuneration.

Sir,—A solicitor's practice has become increasingly difficult and expensive to run. The cost of living, labour, typewriters, paper and other materials has already risen. Transport communications with semi-evacuated firms has become difficult. Many firms have also incurred obligations for double rent and safe storage of documents. Furthermore, extra burdens of filling up forms and watching new legislation are continually being thrown upon a loyal and uncomplaining profession.

Surely the time has come for the profession to press that the 33⅓ per cent. or 25 per cent. addition to profit costs, as a relict of the last war, be now increased to 50 per cent. at least, with a possibility of further rises.

It must be remembered that the State proposes to take 7s. 6d. in the £ or 35 per cent. of our net profit in taxation.

London, W.C.2. AMBROSE E. APPELBE.
4th October.

Obituary.

MR. G. E. BARKER.

Mr. George Ernest Barker, solicitor, of Bognor Regis, died on Thursday, 5th October, at the age of fifty-five. Mr. Barker was admitted a solicitor in 1913.

Reviews.

Form of Hire-Purchase Agreement under the Hire-Purchase Act. 1938. By C. GORDON JONES and REGINALD PROUDFOOT, Solicitors of the Supreme Court. 1939. Demy 8vo. pp. 30. London: Butterworth & Co. (Publishers), Ltd. 2s. 6d. net.

The object of this supplement is to provide a form of hire-purchase agreement under the Hire-Purchase Act, 1938. The form provided relates to motor cars and is an adaptation of the agreement in the author's original work. The Act applies to motor vehicles only where the hire purchase price is £50 or less, and the statement of the cash price before the agreement, as provided by s. 2, is important. Adequate emphasis is laid on this point and practical advice on the matter is given. In view of s. 8 (1) (*d*) some reference should have been made in the agreement to the question as to whether the goods are second-hand or not, and also possibly to an acknowledgment by the hirer that the clause excluding the condition of fitness implied in s. 8 (2) has been made clear to him in accordance with s. 8 (3). The booklet will be of practical assistance to those drafting agreements and it maintains the high standard set by the authors' "Notes on Hire-Purchase Law."

Books Received.

Jackson's Agricultural Holdings and Tenant Right Valuation. By W. HANBURY AGGS, M.A., LL.M., Barrister-at-Law. Ninth Edition. 1939. Demy 8vo. pp. xvi and (with Index) 394. London: Sweet & Maxwell, Ltd. 12s. 6d. net.

Woodfall on Landlord and Tenant, with Forms and Precedents. Revised and re-modelled by LIONEL A. BLUNDELL, LL.M., of Gray's Inn, Barrister-at-Law. Twenty-fourth Edition. 1939. Royal 8vo. pp. clix and (with Index) 1431. London: Sweet & Maxwell, Ltd. 52s. 6d. net.

Dividend Income Tax Tables, for the use of Secretaries, Bankers, Accountants, Stockbrokers, etc. London: Fredc. C. Mathieson and Sons. 1s. net.

Tables of Procedure. Compiled by BERTRAM NELSON, F.S.A.A., Incorporated Accountant (Hons.), with a Section on Executorship by J. F. H. TEMPLER, LL.B., Solicitor. Third Edition. 1939. London: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

War Time Addresses.

(In alphabetical order.)

BEARDALL, FENTON & CO., 4, Holmwood Close, Liberty Hall Road, Addlestone, Surrey.
H. T. H. BOND, Culmleigh, Stoke Canon, Exeter, Devon.
BERNARD CHILL, c/o Ewing & Hickman, 26, Portland Terrace, Southampton.
T. P. JARRATT, 49, Tranby Lane, Anlaby, E. Yorks.
MILLER & SMITHS, 125, High Street, Brentwood, Essex.
PEARCE & NICHOLLS, 42, King Edward's Grove, Teddington, Middx.

H.M. LAND REGISTRY.

LAND REGISTRATION DEPARTMENT.
LAND CHARGES DEPARTMENT.
AGRICULTURAL CREDITS DEPARTMENT.

ALTERATION OF HOURS OF BUSINESS.

Owing to War conditions the hours of business for all purposes from 1st November, 1939, will be from 11 a.m. to 2 p.m., except on Saturdays, when the closing hour will be noon.

All business, however, can and it is requested should be conducted by post.

At Cumberland Sessions, at Carlisle recently, Colonel Timothy Fetherstonhaugh, the chairman, said that it was resolved to discontinue the traditional custom of asking a fee of one guinea from newly sworn magistrates.

To-day and Yesterday.

LEGAL CALENDAR.

9 OCTOBER.—Food purity was already a recognised problem two centuries ago. On the 9th October, 1758, "a fellow was committed to the New Gaol in Southwark for selling adulterated tea in the Borough, a vile practice that seems to have got footing in the shops of some considerable dealers in this city, several grocers having been lately convicted before the commissioners of excise for selling dyed tea and dying it with pernicious drugs and fined considerable sums."

10 OCTOBER.—Rufus Daniel Isaacs was born in London on the 10th October, 1860. His father was a Jewish fruit broker in the City in a substantial way of business. His mother was the daughter of a Jewish commercial house. All his life he had the strong family affection characteristic of his race. Though he was quick-witted and full of vitality, his early years did not foreshadow the extraordinary career which lay before him in law and politics and which made him Lord Chief Justice and Viceroy of India.

11 OCTOBER.—On the 11th October, 1757, John Bowes took his seat on the Woolsack in the Irish House of Lords on his appointment as Lord Chancellor.

12 OCTOBER.—Many rejoiced at Lord Clarendon's fall, and on the 12th October, 1667, Pepys records: "The Parliament is mightily pleased with the King's speech and voted giving him thanks for what he said and hath done and, among other things, would by name thank him for displacing my Lord Chancellor, for which a great many did speak in the House, but it was opposed by some, and particularly Harry Coventry, who got that it should be put to a Committee what particulars to mention in their thanks to the King, saying that it was too soon to give thanks for the displacing of a man before they knew or had examined what was the cause of his displacing."

13 OCTOBER.—When Charles I was brought to trial the illness of the Attorney-General threw on John Cook the task of leading for the prosecution. During the Commonwealth he received his reward in land and appointments in Ireland. He became Chief Justice of Munster, received a house at Waterford and property at Kilbarry and Barnahely, and finally was appointed a Justice of the Upper Bench in Dublin. On the Restoration he was arrested, and having been excepted from the Act of Indemnity for the prominent part he took in the condemnation of the king, he was tried for his life on the 13th October, 1660, at Hick's Hall. He was sentenced to death and ended bravely and cheerfully.

14 OCTOBER.—The 14th October, 1724, was a sensational day in Newgate. Jack Sheppard, recaptured after his first escape, lay there under sentence, and his associate Blueskin was in the bail-dock, the open space outside the Sessions House, awaiting trial for a robbery. While he was there Jonathan Wild, thief-catching detective and unofficially receiver of stolen goods—Gay's very Peachum and the uncrowned king of Newgate—affably offered him brandy. Encouraged by this, Blueskin begged him to say a good word for him in court, but he replied: "I can't do that. You're a dead man." Suddenly enraged Blueskin sprang at him with a clasp-knife and cut his throat to the windpipe. He was only saved by the opportune presence of three surgeons who put a number of stitches in forthwith.

15 OCTOBER.—Next day, the 15th October, produced a bigger sensation. Jack Sheppard escaped from the Castle. He slipped out of his handcuffs, picked the padlock that secured his fetters to the floor, broke the chain that fastened his legs together, dislodged a cartload of bricks and an iron bar from the chimney of his cell up which he climbed, forced open six strong prison doors in the blackness of a moonless night, reached the leads and let himself down on to the adjoining house roofs. He was caught a fortnight later.

THE WEEK'S PERSONALITY.

When John Bowes was promoted from the office of Chief Baron of the Exchequer in Ireland to be Lord Chancellor there, it was largely through the influence of Lord Hardwicke, with whom he had studied law in London. It had been thought at one time that Lord Mansfield, the English Chief Justice, would be given the appointment. Soon after taking his seat, Bowes was raised to the peerage as Baron of Clonlyon. One of his first duties was to clear off the arrears in the Chancery cause list left over by his predecessor, Lord Jocelyn, and in this he succeeded. It was also said of him that he made his court "a terror to fraud and a protection and comfort to every honest man." He had the gift of charming others with his agreeable manners, handsome features and winning smile. His very look inspired trust. He enjoyed the inestimable advantage for one of his profession of a pleasant voice, clear and resonant, while his delivery and his choice of words were those of an accomplished orator. He continued as Chancellor after the accession of George III and lived till 1767, after repeated attacks of gout had undermined his once vigorous health, though they in no way affected his faculties. He was buried in the Cathedral of Christ Church in Dublin.

A TITLE DIES.

Lord Tenterden is dead and has left no heir and with its fourth holder there perishes, after little more than a hundred years, a great legal title. When Abbott, C.J., the first baron, was raised to the peerage, his Kentish loyalties, for he was born at Canterbury, guided his choice of the style under which he was thereafter to be known. "Lord Hendon," after his country residence, had not a sufficiently impressive ring. "Lord Abbott" would have given too easy an opening to the humorists of the Bar, for the unwavering gravity with which he presided over the Court of King's Bench had already inspired them to call it "the Abbot's Priory." Thus his native county provided him with a title justly resounding, for it was no light achievement that the son of a wigmaker and hairdresser carrying on a small business in the precincts of Canterbury Cathedral should raise himself to the place of Lord Chief Justice of England and the rank of a peer of the realm.

HUMBLE ORIGINS.

Once, when he was a great man, he brought his son Charles to Canterbury and standing near the west front of the Cathedral pointed out his starting point. "You see this little shop," he said. "I have bought you here on purpose to show it to you. In this shop your grandfather used to shave for a penny. That is the proudest reflection of my life. While you live never forget it, my dear Charles." Though his beginnings were humble, his initial difficulties were once extravagantly overstated in a speech at a City banquet by Sir Peter Laurie, a saddler, whose rhetorical efforts as Lord Mayor of London must have added considerably to the gaiety of civic functions. "What a country is this we live in!" he declaimed. "In other parts of the world there is no chance except for men of high birth and aristocratic connections, but here genius and industry are sure to be rewarded. See before you the examples of myself, the chief magistrate of this great metropolis and the Chief Justice of England, seated at my right hand, both now in the highest offices in the state and both sprung from the very dregs of the people." Even the subject of this apostrophe could not restrain his laughter.

Notes of Cases.

Judicial Committee of the Privy Council.

Tan Ma Shwe Zin and Others *v.* Koo Soo Chong and Others.

Lord Russell of Killowen, Sir George Rankin and Mr. M. R. Jayakar. 22nd June, 1939.

BURMA — CHINESE BUDDHIST — SUCCESSION DISPUTE — WHETHER CHINESE CUSTOMARY OR BUDDHIST LAW APPLICABLE—BURMA LAWS ACT (XIII of 1898), s. 13.

Appeal from a decision of the High Court, Rangoon (appellate jurisdiction), affirming a decision of the same court in its original civil jurisdiction.

The respondent, Chong, was the nephew of one, K. B. Tin, who was the eldest of four sons of a Chinaman, a Buddhist, who lived in Burma until 1906, when he died childless. The respondent was the eldest son of Tin's second brother. Only one other brother now survived. On Tin's death in 1906 his widow entered into possession of his property and carried on his business. She died in April, 1929, having made a will bequeathing, *inter alia*, a sum of money to the respondent, no bequest of the residuary estate having, however, been made. In proceedings instituted in 1930 it was held that two of the widow's sisters and a brother, the present appellants, were each entitled to one-third of the property not disposed of by the widow's will, it being held on appeal that the law applicable to "Chinese Buddhists" was Chinese customary law (*Tan Ma Shwe Zin* v. *Tan Ma Ngwen Zin* (1932), I.L.R., 10 Rang. 97). In March, 1934, the respondent brought the present action claiming that he was sole heir to both Tin and his widow, on the footing that Chinese customary law governed inheritance and succession to Chinese Buddhists in Burma, and that the widow had no right to dispose of her husband's estate. The trial and appeal courts both held that Chinese customary law ruled the case, and the Appellate Court held that the respondent was entitled to the estate on his uncle's death; that a wife was entitled to no estate of her own; but that, as she was entitled to be in control of the inheritance during her life, time did not run against the plaintiff until the widow's death in 1929. The estate was accordingly ordered to be vested in the respondent nephew, and the present appeal was brought. (*Cur adv. vult.*)

Sir GEORGE RANKIN, delivering the judgment of the Board, said that the respondent could only maintain the decree in his favour if he established that Chinese customary law governed the succession. He referred to s. 13 of the Burma Laws Act (XIII of 1898), which provides that, in any question regarding, *inter alia*, succession, the law applicable shall be "(*a*) the Buddhist law . . . where the parties are Buddhists." A Chinaman who was a Buddhist came within that section, and he could not be excluded either on the ground that he was not a Burmese Buddhist or because the law which governed him in China was not a specifically Buddhist one. The section accordingly applied here. There would be little difficulty, were it shown that different schools of Buddhist law obtained in different places, in applying to Buddhist law the principle that in each case the appropriate school of law was that to which the persons concerned owned allegiance. That principle, however, did not justify the court in applying as Buddhist law a law which was not Buddhist at all, merely because it was applied generally to Chinamen in China without any special exception for Buddhists. While the policy of the Legislature in prescribing Buddhist law for Buddhist parties was of full effect in Burma, it was not intended to prescribe for each Buddhist whatever law was found to govern him, but rather that all Buddhists should be governed by a religious law deemed to be theirs as Buddhists, though that assumption might be in some respects ill founded. The appeal must be allowed.

COUNSEL: *A. M. Dunne*, K.C., and *A. P. Pennell; W. Wallach.*

SOLICITORS: *Lambert & White; Gard, Lyell & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Davis *v.* Foots.

MacKinnon and du Parcq, L.JJ., and Bennett, J. 6th October, 1939.

NEGLIGENCE—FLAT—NEW TENANTS—FORMER OCCUPIERS CAUSING REMOVAL OF GAS FIRE—ESCAPE OF GAS—INJURY TO NEW TENANTS—LIABILITY.

Appeal from Wrottesley, J.

In 1937 the plaintiff and her husband took a three-roomed flat from Mr. and Mrs. Foots, the defendants, who owned and occupied it. There had been a gas fire in the sitting-room, but when taking the flat the plaintiff had told Mrs. Foots that she did not want it. The fire was later disconnected by the son of the defendants, who also removed the tap union, causing an escape of gas. No warning that the fire had been disconnected and removed was given to the new occupants. They went into occupation on their wedding day and that night they were gassed in bed. The plaintiff recovered, but her husband died. In an action by the plaintiff, Wrottesley, J., held that she was entitled to £350 damages.

MACKINNON, L.J., allowing the defendants' appeal, said that it was suggested that because the plaintiff told Mrs. Foots that she did not want the gas fire, the defendants undertook work for Mr. and Mrs. Davis in removing it, and that there was an implied condition to use reasonable skill and care. No such contractual relation could be deduced. There was no such undertaking to do work for Mr. and Mrs. Davis.

DU PARCQ, L.J., and BENNETT, J., agreed.

COUNSEL: *J. Charlesworth; C. Salmon.*

SOLICITORS: *Maples, Teesdale & Co.*, for *Wright & Ellis*, of Seaham; *Isadore Goldman & Son*, for *Lionel Wolfe and Hewitt*, of Sunderland and Newcastle-on-Tyne.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Selwood *v.* Towneley Coal & Fireclay Co., Ltd.

Slesser, MacKinnon and du Parcq, L.JJ. 9th October, 1939.

WORKMEN'S COMPENSATION—INJURY BY ACCIDENT—PAYMENT TO WORKMAN UNDER ACT—NO CLAIM BY WORKMAN—EFFECT ON COMMON LAW RIGHTS — WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 29 (1).

Appeal from Croom-Johnson, J.

In February, 1938, the plaintiff was injured in an accident at the defendants' colliery where he was employed. While he was in hospital they made certain payments to a third party for him under the Workmen's Compensation Act, 1925, though he had made no claim thereunder. Subsequently, he brought an action at common law against them alleging negligence and breach of statutory duty on their part. Croom-Johnson, J., gave judgment for him for £3,000 damages. The defendants appealed, contending that as the plaintiff had already received compensation, s. 29 (1) precluded him from recovering damages for the same injury at common law.

SLESSER, L.J., allowing the appeal, said that it made no difference that the plaintiff had not made a claim. The mere fact that, though he took money as compensation, he had not made a claim did not distinguish this case from *Perkins* v. *Hugh Stevenson & Sons, Ltd.*, 83 SOL. J. 655; 161 L.T. 149. If a man did not receive the money under the Act different considerations would apply, but here it was admitted that the plaintiff did so receive it.

MACKINNON and DU PARCQ, L.JJ., agreed.

COUNSEL: *Sellers*, K.C., and *Horniman; Fyfe*, K.C., and *Nyholm-Shawcross.*

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Peace & Ellis*, of Wigan; *Robinson & Bradley*, for *Oddie & Roebuck*, of Blackburn.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Barsby *v.* Doncaster Amalgamated Collieries, Ltd.

Scott, Finlay and du Parcq, L.JJ. 27th July, 1939.

Mines and Minerals—Coal Miner—Duty to be at Pit-head in Time to be taken down—Arrival before Close of Winding Period—Not taken down owing to Crowd of Men waiting—Whether Absentee.

Appeal from Doncaster County Court.

The plaintiff was employed as a coal miner by the defendants. His shift began at 6 a.m. The winding period for lowering or admission to the mine was from 5.25 a.m. to 6 a.m. In 1938 the defendants put up a notice to the effect that as some men persistently presented themselves late for work at the shaft tops the banksmen in charge of the cages had instructions that anyone presenting himself after 6 a.m. should be refused admittance and treated as an absentee. The plaintiff said that he had not seen the notice. On the day in question the plaintiff having completed all preliminaries (changing into his mining clothes, filling his water bottle, getting his lamp, having it tested) arrived at the pit-head very shortly before 6 a.m. and took his place in the queue waiting there. The banksman had started putting men into the cage at 5.43 a.m. The first cage had been three men short of full complement, the second two short, the third two short, the fourth one short. The fifth had been full. The sixth and last, which went down two and a half minutes before 6 a.m., was also full. After this cage had gone down the plaintiff, who was then waiting, heard the banksmen call: "No more this morning," the last buzzer having gone just as the cage was coming up. The plaintiff, in common with all the men who had arrived later than two and a half minutes before 6 a.m., was treated as missing the day's work and was not paid. The plaintiff, contending that he was at the pit-head in time, brought an action against the defendants to recover the amount unpaid. The county court judge gave judgment in his favour, finding as a fact that he was there in time.

Scott, L.J., dismissing the defendants' appeal, said that the question was one of the interpretation of the contract of employment in the light of the statutory provisions affecting the length of hours during which coal miners were allowed to be underground on the normal shift and the provisions for fixing the period of winding down and winding up. Counsel had assumed that no particular term of the contract affected the question. The contract of employment of a coal miner who was going to work underground had to be in accordance with the requirements of the Coal Mines Regulation Act, 1908, s. 1 (1), and the Coal Mines Act, 1931, s. 1. The defendants had argued that it was the men's duty to arrive at the pit-head in such time that there was room for the whole shift to get down in the period allowed and that they must spread their arrivals more or less evenly over all possible windings during the winding period. That might be a reasonable term to put into the contracts, but it could not be read into them. The notice posted did not have regard to the probability that if each man of a shift acted for himself few men would arrive at the beginning of the winding period and there would be a congestion towards the end, as all would wish to have the maximum time at home. It must be a term of each man's contract of employment that he would present himself at the pit-head at a time which would enable the defendants to wind him down in accordance with their statutory duties. The judge had held that the plaintiff was at the pit-head in accordance with the requirements of his contract and that, in the absence of any special term about arrangements with others, he could not say that the defendants had shown any ground for escaping the conclusion that they had failed to make arrangements to enable the plaintiff to be wound down within the time required by statute, though he was present within the times notified.

Finlay and du Parcq, L.JJ., agreed.

Counsel: *Radcliffe*, K.C., and *J. Herbert*; *Neal*.

Solicitors: *Hosking & Berkeley*, for *Gichard & Co.*, of Rotherham; *Corbin, Greener & Cook*, for *Raley & Sons*, of Barnsley.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Whittaker *v.* Whittaker.

Sir Boyd Merriman, P., and Henn Collins, J. 20th July, 1939.

Husband and Wife—Summons for Wilful Neglect to Maintain—Separation Deed containing dum casta Clause — Husband alleging Adultery — Wife's Proceedings in County Court to enforce Deed—Finding of Adultery by County Court Judge—Res judicata—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict., c. 39), s. 6.

This was a husband's appeal from a finding of the Colchester justices that he had wilfully neglected to provide reasonable maintenance for his wife, ordering him to pay 10s. per week for her maintenance. In December, 1933, the parties entered into a separation deed under which the husband agreed to pay maintenance at a certain rate. The deed contained a *dum casta* clause. In 1938 the husband declined to make further payments, whereupon the wife brought proceedings in the Colchester County Court to enforce the deed. The county court judge having heard the evidence found that the wife had committed adultery. In the above circumstances the wife proceeded to complain before the Colchester justices that the husband was guilty of wilful neglect to maintain. The husband relied on the judgment of the county court judge. In the result the justices, by a majority, made an order for payment of 10s. per week, giving reasons as follows: The justices found from the evidence of the wife that the husband had wilfully neglected to provide reasonable maintenance for his wife and infant child Frederick Anthony Russell Whittaker. The justices held they were not bound by the decision of the county court judge as to adultery having been committed, and, in view of the proviso to the Summary Jurisdiction (Married Women) Act, 1895, s. 6, the issue to be tried by the justices was not identical with that tried by the county court judge. The justices further found that commission of adultery was not proved to their satisfaction.

Sir Boyd Merriman, P., after reviewing the facts, said that in his opinion the justices were wrong in holding that they were not bound by the county court judge's decision. He would content himself with referring to the very useful view of this branch of the law by Lush, J., in *Ord* v. *Ord* [1923] 2 K.B. 432, where, quoting from the notes of the *Duchess of Kingston's Case* (1776), 1 Leach 146, in "Smith's Leading Cases," he said, at p. 439: "As is said in the notes to the *Duchess of Kingston's Case*, if the truth has been ascertained, the party against whom it has been ascertained is taken as admitting it. This is what the learned author says: 'An estoppel, therefore, is an admission; or something which the law treats as equivalent to an admission, of an extremely high and conclusive nature—so high and so conclusive, that the party whom it affects is not permitted to aver against it or offer evidence to controvert it.'" Then he continued at p. 440: "The litigant must admit that which has been judicially declared to be the truth with regard to the dispute that he raised. In order to see what the fact is that he must admit the truth of, one has always to see what is the precise question, the precise fact that has been disputed and decided. That had constantly been stated to be the law." Then, on the same page, he quoted from "Stephen's Digest of the Law of Evidence," 10th ed., this passage: "Every judgment is conclusive proof as against parties and privies of facts directly in issue in the case, actually decided by the

court, and appearing from the judgment itself to be the ground on which it was based." In his, his lordship's, opinion every word of that passage applied to the present case and to the section on which counsel for the respondent had relied. The judgment was between the same parties; the fact of adultery was directly in issue before the county court judge. It was actually decided by him, and quite clearly appeared to be the ground for the decision, for it was the only ground on which the judgment could be based. That being so, the moment that judgment was produced and proved to be in full force and effect, and proved to be given by a court of competent jurisdiction on these issues, there was an end of the matter so far as the justices were concerned. That judgment was itself not merely proof, but conclusive proof, so far as the justices were concerned, that the wife had committed adultery. It was to be observed that the situation thus raised might be an extremely unfortunate one if such were a conclusive estoppel in all circumstances. But it would not be conclusive if the matter were litigated in the Divorce Division in a matrimonial suit between the parties. It was important to bear that fact in mind. With regard to proof in their lordships' court, he would refer to, but without reading it, the well-known passage in the judgment of Fletcher Moulton, L.J., in the full Court of Appeal in *Harriman* v. *Harriman* [1909] P. 123. However binding the estoppel might be elsewhere, it was not binding on the Divorce Court when that court had to satisfy itself that the facts were proved. In other words, a court of summary jurisdiction was bound by the decision of an inferior court of record, but the Divorce Court was bound by the decision neither of a county court judge, nor of a court of summary jurisdiction, great as the evidential value, as Fletcher Moulton, L.J., said (at p. 142), might be of a decision of either of those tribunals. Of course, it was precisely that aspect of the matter which was reflected in the Matrimonial Causes Act, 1937, s. 6, subs. (2), dealing with decisions of courts of summary jurisdiction. Therefore, in fact, the parties need not be left finally in the unfortunate position that one court found that adultery had been committed, and another court said that it was not satisfied that adultery had been committed. The wife could put the matter to proof by asking the county court judge to re-hear and re-determine the matter on new material. A county court judge, unlike other tribunals, had that jurisdiction by statute. She could also get leave to appeal out of time from the county court judge's decision if the Court of Appeal were minded to give such leave, or the matter could be tested in the Divorce Court afresh on some appropriate proceeding taken by the wife to enforce her conjugal rights, whatever they might be. However, as the present matter stood, sitting as a Divisional Court of the Divorce Division on appeal from the decision of the Colchester justices that they were not bound by the decision of the county court judge, they, their lordships, must find that the justices were so bound, and they ought to have given effect to it. The appeal would therefore be allowed.

HENN COLLINS, J., agreed.

COUNSEL: *P. T. Miller*, for the appellant husband; *G. A. Hopper*, for the respondent wife.

SOLICITORS: *Iliffe, Sweet & Co.*, for *Ellison & Co.*, Dovercourt; *Speechly, Mumford & Craig*, for *Jones & Son*, Colchester.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Mr. Justice Hawke, Mr. Justice Charles, Mr. Justice Hilbery and Mr. Justice Hallett attended at the Central Criminal Court on the 10th October to fix and pass the dates for the sessional sittings for the ensuing year.

Many applications were made to postpone cases because of the war when the Law Courts reopened after the Long Vacation. It was stated that banks had removed relevant documents to different centres; that solicitors were in difficulties consequent on a change of offices; that clients could not be traced; and that witnesses were not immediately available.

War Legislation.

(Supplementary List, in alphabetical order, to those published in THE SOLICITORS' JOURNAL, *dated September 16th, 23rd, 30th, and October 7th.)*

ROYAL ASSENT.

Courts (Emergency Powers) (Scotland) Act, 1939.
Education (Emergency) Act, 1939.
Education (Emergency) Scotland Act, 1939.
Execution of Trusts (Emergency Provisions) Act, 1939.
Finance (No. 2) Act, 1939.
Solicitors (Disciplinary Committee) Act, 1939.

Progress of Bills.

House of Commons.

Prices of Food Bill.
Read First Time. [9th October.

Statutory Rules and Orders.

No. 1352. **Civil Defence.** Fire Precautions. Order, dated September 22, applying Sect. 58 of the Civil Defence Act, 1939, to the Fire Authority for the City of Bradford.

No. 1297. **Compensation** (Defence). The Interest on Compensation (Defence) Order, dated September 27.

No. 1351 /L.22. **County Court, England.** Procedure. The County Court (No. 2) Rules, dated October 2.

No. 1336. **Customs.** Export Licences. Open General Export Licence for Flower Seeds, dated September 30.

No. 1374. Customs. The Export of Goods (Prohibition) (No. 2) Order, 1939, Amendment (No. 3) Order, dated October 6.

No. 1368. Customs. The Import Duties (Exemptions) (No. 7) Order, dated October 9. (Pig Iron.)

No. 1369. Customs. The Import Duties (Exemptions) (No. 8) Order, dated October 9. (Aluminium and Aluminium Goods.)

No. 1344. Customs. The Import of Goods (Prohibition) (No. 2) Order, dated September 29.

No. 1348. **Death Duties.** Relief against Double Duty. Order in Council, dated September 28, applying s. 20 of the Finance Act, 1894, to Northern Rhodesia.

No. 1349. Death Duties. Northern Ireland. Relief against Double Duty. Order in Council, dated September 28, applying s. 20 of the Finance Act, 1894, as in force in Northern Ireland, to Northern Rhodesia.

No. 1337. **Emergency Powers** (Defence). The Bacon (Licensing of Producers) Order, dated October 2.

No. 1346. Emergency Powers (Defence). The Condensed Milk (Provisional Prices) (No. 2) Order, dated October 3.

No. 1327. Emergency Powers (Defence). The Control of Hemp (No. 2) Order, dated September 28.

No. 1377. Emergency Powers (Defence). The Control of Hides and Skins (No. 4) Order, dated October 5.

No. 1373. Emergency Powers (Defence). The Control of Machine Tools (No. 1) Order, dated October 6.

No. 1358. Emergency Powers (Defence). The Control of Mercury Order, dated October 3.

No. 1357. Emergency Powers (Defence). The Control of Mica (No. 1) Order, dated October 3.

No. 1354. Emergency Powers (Defence). The Control of Shirts Order, dated October 4.

No. 1328. Emergency Powers (Defence). The Control of Silk (No. 3) Order, dated September 28.

No. 1329. Emergency Powers (Defence). The Control of Timber (No. 5) Order, dated September 30.

No. 1330. Emergency Powers (Defence). The Control of Timber (No. 5) Order, 1939, Direction No. 1, dated September 30.

No. 1331. Emergency Powers (Defence). The Control of Timber (No. 5) Order, 1939, Direction No. 2, dated September 30.

No. 1381. Emergency Powers (Defence). The Defence (Grants and Loans) Regulations, 1939. Order in Council, dated October 5.

No. 1380/S.97. Emergency Powers (Defence). The Defence (Local Government) (Scotland) Regulations, 1939, Order in Council, dated October 5.

No. 1379. Emergency Powers (Defence). The Defence (Summer Time) Regulations, 1939, Order in Council, dated October 5.

No. 1251. Emergency Powers (Defence). The Defence (Finance) (No. 2) Regulations, 1939, Order in Council, dated September 21.

No. 1345. Emergency Powers (Defence). Finance—Currency. The Currency Restrictions Exemption (No. 2) Order, dated September 28.

No. 1324. Emergency Powers (Defence). Food. The Feeding Stuffs (Maximum Prices) Order, dated September 29.

No. 1335. Emergency Powers (Defence). Food. Order, dated September 30, amending the Imported Bacon and Hams (Requisition) Order, 1939.

No. 1370. Emergency Powers (Defence). The Home Produced Bacon (Distribution) Order, dated October 4.

No. 1332. Emergency Powers (Defence). The Imported Lard (Control) Order, dated September 29.

No. 1334. Emergency Powers (Defence). The Liquid Glucose and Invert Sugar (Maximum Wholesale Prices) (No. 2) Order, dated September 30.

No. 1384. Emergency Powers (Defence). The Margarine and Cooking Fats (Requisition) Order, dated October 7.

No. 1371. Emergency Powers (Defence). The Oilseeds, Vegetable Oils and Fats and Marine Oils (Control) Order, dated October 4.

No. 1378/S.96. Emergency Powers (Defence). Order in Council, dated October 5, amending Regulation 93 of the Defence Regulations, 1939.

No. 1353. Emergency Powers (Defence). The Public Entertainments (Restriction) (No. 3) Order, dated September 30.

No. 1383. Emergency Powers (Defence). The Public Entertainments (Restriction) (No. 4) Order, dated October 5.

No. 1319. **Income Tax.** Norway. The Relief from Double Income Tax on Agency Profits (Norway) Declaration. Order in Council, dated September 21.

No. 1350. Income Tax. South Africa. The Relief from Double Income Tax on Agency Profits (South Africa) Declaration, 1939, Order in Council, dated September 28.

No. 1375. **Patents.** Designs, Copyright and Trade Marks (Emergency) Rules, dated September 26.

No. 1333. **Trading with the Enemy** (Specified Persons) (Amendment) Order, dated September 30.

No. 1294. **Wheat** (Quota Payments : Standard Amount) No. 2 Order, dated September 26.

Provisional Rules and Orders.

Unemployment Assistance. (Appeal Tribunals) (Amendment) Rules, dated September 14.

Non-Parliamentary Publication.

Land Registry.

Registration of Title to Land.

Rules and Orders.

THE COUNTY COURT (NO. 2) RULES, 1939.

DATED OCTOBER 2, 1939.

[S.R. & O., 1939, No. 1351/L.22. Price 1d. net.]

I, Thomas Walker Hobart Viscount Caldecote, Lord High Chancellor of Great Britain, in exercise of the power conferred on me by Section 1 of the Administration of Justice (Emergency Provisions) Act, 1939,* and all other powers enabling me in this behalf, do hereby make the following Rules :—

1. In Order I, Rule 2, of The County Court Rules, 1936† (which prescribes the times when County Court offices are to be open), "3.30 p.m." shall be substituted for "4 p.m."

2. Rule 2 of the County Court (No. 1) Rules, 1939‡ (which amends Order I, Rule 2, aforesaid as from the 1st day of January, 1940), is hereby revoked.

3. These Rules may be cited as the County Court (No. 2) Rules, 1939, and shall come into operation on the 23rd day of October, 1939.

Dated the 2nd day of October, 1939. *Caldecote*, C.

* 2 & 3 Geo. 6, c. 78. † S.R. & O. 1936 (No. 626) I, p. 282. ‡ S.R. & O. 1939, No. 815.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

PRACTICE NOTE.

CASES IN LISTS FOR TRIAL BY JURY.

Under the Administration of Justice (Emergency Powers) Act, 1939, Section 8 (1), any cause or matter in the Probate Division entered for trial by a Jury prior to the coming into operation of this Act shall be placed in the appropriate Defended or Undefended List and take its place in such List according to the date of entry for trial, unless the Court or a Judge makes an Order for trial with a Jury subsequent to the coming into operation of the Act.

H. F. O. NORBURY,
6th October, 1939. *Senior Registrar.*

Societies.

General Council of the Bar.

The Council has adopted, as is shown by the following resolution, a form of notice and circular letter (both published below) which are the only authorised forms to be sent out to professional clients on behalf of practising barristers when in whole-time war service

A limited number of the printed notices and letters may be obtained on behalf of such barristers on application to the Secretary at 5 Stone Buildings, Lincoln's Inn, W.C.2.

RESOLUTION.

With the object of preserving as far as possible the practice of every barrister who is unable to attend to it owing to service in H.M. Forces or other whole-time public service in connection with the war, the General Council of the Bar hereby resolves :—

1. That every barrister remaining in practice should make it a point of honour—

(*a*) to do what he can to ensure that every serving barrister shall get back his practice when he is able to resume work at the Bar ;

(*b*) meanwhile, so far as is reasonably practicable, to do any work for any serving barrister which is entrusted to him, whether or not he has been in the same chambers, or whether he is senior or junior, on such terms as to sharing fees as they shall agree, and, in default of any agreement, sharing the fees equally, other than the clerk's fees, which should go to the clerk of the barrister who does the work.

The above applies both to King's counsel and junior counsel, but so that no King's counsel may do work for a junior counsel, nor junior counsel for a King's counsel—

(*c*) that any barrister doing work for a serving barrister should after his signature to pleadings or other documents add the words "for (A. B.) absent on war service," and if holding a brief shall state to the court that he is holding it in the absence of (A. B.) on war service.

2. That a serving barrister shall be entitled to send or have sent on his behalf to every professional client a notice with a covering letter in a form which has been approved by the Bar Council and The Law Society, indicating (if he is in a position to do so) the name or names of any barrister or barristers with whom he has made actual arrangements to do his work when possible.

3. That on his return to practice a serving barrister shall be entitled to notify those who, prior to his departure, had been his professional clients that he has returned to practice at a given address.

4. That it shall be a point of honour to inform a solicitor who has delivered or is proposing to deliver a brief or instructions for a serving barrister of the effect of this resolution, and to invite him in delivering or transferring the brief or instructions to add to the name of the barrister selected by him (whether or not one of those named pursuant to paragraph 2) the words "in the absence of (A. B.) on war service."

5. That any barrister to whom a brief or instructions may be delivered in circumstances to which the foregoing paragraphs apply (even if the name of the serving barrister is not endorsed upon them) shall make it a point of honour where reasonably practicable to accept the papers and to do the work and to account to the serving barrister for an agreed proportion of the fee when paid, or in the absence of agreement, for half the fee.

October, 1939.

BARRISTERS ON WAR SERVICE.

NOTICE TO CLIENTS.

With the object of preserving so far as possible the practice of every barrister who is unable to attend to it owing to service in H.M. Forces or other whole-time public service in connection with the war, the General Council of the Bar has approved of this notice for circulation to the professional clients of serving barristers.

1. So far as it is reasonably practicable it will be the duty of barristers still in practice during the war to do work for barristers on whole-time war service when requested to do so. This will be irrespective of any question of seniority, providing that a King's counsel may not do work for a junior counsel nor a junior counsel for a King's counsel.

2. In cases in which a solicitor following his usual practice would probably have employed a serving barrister, the solicitor is invited in the endorsement of the brief or instructions to add to the name of *the barrister whom he selects to do the work* the words " in the absence of (A.B.) on war service."

3. Without in any way limiting the operation of paragraph 2 as to choice of counsel by a solicitor, it is permissible for a serving barrister to notify his professional clients of the name of any barrister who has informed him of his willingness to accept briefs or instructions endorsed as set out in paragraph 2.

4. The Law Society has seen and approved this notice.

(Form of Letter Approved by the General Council of the Bar on Behalf of a Serving Barrister.)

Dear Sir,

.....is now absent on whole-time war service and unable to attend to his practice. I am directed on his behalf to invite your attention to the enclosed notice, which has been approved by the General Council of the Bar and authorised for circulation to the clients of serving barristers.

.....of { of / this address } has been good enough to say that he is willing to accept a brief or instructions endorsed with his name and the words " In the absence of.....on war service."

May I at the same time draw your attention to the words in italics in paragraph 2 of the enclosed notice.

Yours, etc.

Legal Notes and News.

Honours and Appointments.

Lord Macmillan has resigned his office of Lord of Appeal in Ordinary, and the King has been pleased to approve that Viscount Maugham be appointed a Lord of Appeal in Ordinary in succession to Lord Macmillan.

The King has been pleased to approve the appointment of Mustafa Fuad Zini Bey, Puisne Judge of Supreme Court of Cyprus, to be Puisne Judge, Gold Coast.

The Colonial Legal Service announce that Mr. G. L. Jobling, Legal Draftsman, Nigeria, has been appointed Attorney-General of Sierra Leone.

Mr. A. G. Erskine Hill, K.C., M.P., has been appointed Parliamentary Private Secretary (unpaid) to the Lord Advocate.

Notes.

An exception to the general rule that members of the Bar robe when the court robes was seen recently in the Law Courts, when a junior counsel, engaged in the conduct of a non-jury action, appeared in the uniform of a Royal Air Force officer.

Court Papers.

Supreme Court of Judicature.

Rota of Registrars in Attendance on

Date.	Emergency Rota.	Appeal Court No. I.	Mr. Justice Farwell.
	Mr.	Mr.	Mr.
Oct. 16	More	Reader	Ritchie
,, 17	Reader	Andrews	Blaker
,, 18	Andrews	Jones	More
,, 19	Jones	Ritchie	Reader
,, 20	Ritchie	Blaker	Andrews
,, 21	Blaker	More	Jones

	Group A.		Group B.	
Date.	Mr. Justice Bennett. Non-Witness.	Mr. Justice Simonds. Witness.	Mr. Justice Crossman. Non-Witness.	Mr. Justice Morton. Witness.
	Mr.	Mr.	Mr.	Mr.
Oct. 16	Andrews	More	Blaker	Jones
,, 17	Jones	Reader	More	Ritchie
,, 18	Ritchie	Andrews	Reader	Blaker
,, 19	Blaker	Jones	Andrews	More
,, 20	More	Ritchie	Jones	Reader
,, 21	Reader	Blaker	Ritchie	Andrews

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (28th September 1939) 3%. Next London Stock Exchange Settlement, Thursday, 26th October, 1939.

	Div. Months.	Minimum Price 11 Oct. 1939.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	98½	4 1 3	—
Consols 2½%	JAJO	64½†	3 17 10	—
War Loan 3½% 1952 or after	JD	88½	3 19 1	—
Funding 4% Loan 1960-90	MN	100½	3 19 7	3 19 3
Funding 3% Loan 1959-69	AO	87½†	3 8 4	3 13 7
Funding 2½% Loan 1952-57	JD	88½	3 2 2	3 12 8
Funding 2½% Loan 1956-61	AO	80†	3 2 6	3 17 4
Victory 4% Loan Av. life 21 years	MS	102	3 18 5	3 17 2
Conversion 5% Loan 1944-64	MN	104½†	4 16 0	3 17 6
Conversion 3½% Loan 1961 or after	AO	87½	4 0 0	—
Conversion 3% Loan 1948-53	MS	94½	3 3 6	3 10 9
Conversion 2½% Loan 1944-49	AO	93½	2 13 8	3 6 10
National Defence Loan 3% 1954-58	JJ	92	3 5 3	3 11 9
Local Loans 3% Stock 1912 or after	JAJO	74¾†	4 0 3	—
Bank Stock	AO	290†	4 2 9	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	67	4 2 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	75	4 0 0	—
India 4½% 1950-55	MN	104	4 6 6	4 0 10
India 3½% 1931 or after	JAJO	79½	4 8 4	—
India 3% 1948 or after	JAJO	66¼	4 10 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	103	4 7 5	4 6 3
Sudan 4% 1974 Red. in part after 1950	MN	98xd	4 1 8	4 2 3
Tanganyika 4% Guaranteed 1951-71	FA	100	4 0 0	4 0 0
L.P.T.B. 4½% " T.F.A." Stock 1942-72	JJ	101	4 9 1	4 0 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	83	3 0 3	3 19 1
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	88	4 10 11	4 15 0
Australia (Commonw'th) 3% 1955-58	AO	70½	4 5 1	5 11 0
*Canada 4% 1953-58	MS	103	3 17 8	3 15 9
Natal 3% 1929-49	JJ	90	3 6 8	4 8 10
New South Wales 3½% 1930-50	JJ	82	4 5 4	5 15 0
New Zealand 3% 1945	AO	81½	3 13 7	7 1 7
Nigeria 4% 1963	AO	98	4 1 8	4 2 8
Queensland 3½% 1950-70	JJ	80	4 7 6	4 15 4
South Africa 3½% 1953-73	JD	90	3 17 9	4 0 11
Victoria 3½% 1929-49	AO	82¼	4 5 1	5 18 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	73	4 2 2	—
Croydon 3% 1940-60	AO	83½	3 11 10	4 4 9
Essex County 3½% 1952-72	JD	95½	3 13 4	3 14 10
Leeds 3% 1927 or after	JJ	75	4 0 0	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	86¼	4 1 2	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	59	4 4 8	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	72	4 3 4	—
Manchester 3% 1941 or after	FA	73	4 2 2	—
Metropolitan Consd. 2½% 1920-49	MJSD	92	2 14 4	3 9 2
Metropolitan Water Board 3% " A " 1963-2003	AO	71½	4 3 11	4 6 5
Do. do. 3% " B " 1934-2003	MS	74	4 1 1	4 3 4
Do. do. 3% " E " 1953-73	JJ	84	3 11 5	3 17 1
*Middlesex County Council 4% 1952-72	MN	101	3 19 2	3 18 0
* Do. do. 4¼% 1950-70	MN	103¾	4 6 8	4 1 4
Nottingham 3% Irredeemable	MN	74½	4 0 6	—
Sheffield Corp. 3½% 1968	JJ	93	3 15 3	3 18 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS		Middle Price.		
Gt. Western Rly. 4% Debenture	JJ	93½	4 5 7	—
Gt. Western Rly. 4½% Debenture	JJ	102½	4 7 10	—
Gt. Western Rly. 5% Debenture	JJ	112½	4 8 11	—
Gt. Western Rly. 5% Rent Charge	FA	106	4 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	99½	5 0 6	—
Gt. Western Rly. 5% Preference	MA	80	6 5 0	—
Southern Rly. 4% Debenture	JJ	93½	4 5 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½	3 18 10	3 18 0
Southern Rly. 5% Guaranteed	MA	105	4 15 3	—
Southern Rly. 5% Preference	MA	80	6 5 0	—

* Not available to Trustees over par.
† Market price.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.